

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs February 8, 2008

**NEWT OCHALEK v. DONNIE L. RICHMOND**

**Appeal from the Chancery Court for Dickson County**  
**No. 10156-06     Larry J. Wallace, Judge**

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**No. M2007-01628-COA-R3-CV - Filed June 30, 2008**

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This is an appeal from a declaratory judgment action concerning the validity of a marriage. Purported wife died intestate; deceased's son sought declaration that her marriage to defendant was void *ab initio* for purposes of administering decedent's estate. The proof showed that defendant and deceased participated in a wedding ceremony but that defendant forged the officiating minister's signature on the marriage license and certificate following the ceremony. The trial court declared the marriage void as a matter of law. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

ANDY D. BENNETT, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and RICHARD H. DINKINS, J., joined.

Joseph Lee Johnson, Fulton, Kentucky, for the appellant, Donnie L. Richmond.

Jack L. Garton, Dickson, Tennessee, for the appellee, Newt Ochalek.

**MEMORANDUM OPINION<sup>1</sup>**

Appellee Newt Ochalek is the son of Patricia D. Gills who died intestate on September 29, 2005. Following her death, Mr. Ochalek filed a complaint for declaratory judgment seeking to have the purported marriage of Ms. Gills and Appellant Donnie L. Richmond declared void *ab initio*. According to Mr. Ochalek, Ms. Gills participated in a staged wedding ceremony on July 22, 1997, "on a whim" but never intended to marry Mr. Richmond and never held herself out to be married.

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<sup>1</sup>Tenn. R. Ct. App. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

Mr. Richmond challenged Mr. Ochalek's standing to contest the validity of the marriage arguing the marriage was, at most, voidable, which abated any right to challenge the marriage upon the death of Ms. Gills.

The Chancery Court for Dickson County found that Mr. Ochalek had standing to bring the action and a bench trial was held on January 26, 2007. The evidence revealed that an application for a marriage license was submitted to the Dickson County Court Clerk on June 16, 1997. The application, entitled "Marriage Record," was signed by "Patricia D. Haley" and "Donnie Richmond." The signature "Patricia D. Haley" was alleged to be that of Mr. Ochalek's mother, whose divorce from her former husband, Robert Haley, was finalized months before in late 1996. Mr. Ochalek, however, noted that the name "Patricia Gills" was legally restored to her and was the name she used at the time the application was filed.

Shortly after the application was filed, a ceremony was held on June 22, 1997, at Montgomery Bell State Park in Dickson County. William E. Ingram, an ordained minister and Mr. Richmond's brother, officiated the ceremony. Mr. Ingram said he saw the marriage license before performing the wedding. However, Mr. Ingram "did not sign the marriage record, marriage certificate, or tear-off slips." Mr. Richmond later forged Mr. Ingram's signature on these documents as well as on the Tennessee Department of Health's Certificate of Marriage, or vital statistics form, and submitted them to the Dickson County clerk. Despite her alleged marriage to Mr. Richmond, the evidence showed that Ms. Gills continued to use the name "Patricia Gills," filed tax returns as a single individual under the same name, applied for social security benefits in the name of her deceased ex-husband, and named only her four children as the primary beneficiaries of her life insurance policy in 2003. None of Ms. Gills' children were present at the wedding ceremony.

Based on the evidence presented, the court found as fact that Mr. Richmond signed the officiating minister's name to the tear-off portion of the marriage license and vital statistics form; Ms. Gills did not consider herself to be married and did not put herself forward in the community as a married woman; a valid marriage license was never issued to Ms. Gills or Mr. Richmond; and Ms. Gills and Mr. Richmond attempted to perpetrate a fraud on certain creditors as well as the state and federal government. The court held the marriage void as a matter of law by order entered March 26, 2007. Mr. Richmond appeals, taking issue with the court's determinations that standing was proper, a valid marriage license was never issued, the forgery invalidated the marriage even if solemnized by ceremony, and certain reputation and character evidence was relevant to the facts at issue.

#### ANALYSIS

We review a trial court's findings of fact de novo upon the record, accompanied by a presumption of correctness unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d). However, we review conclusions of law de novo with no presumption of correctness on appeal. *Emmit v. Emmit*, 174 S.W.3d 248, 251 (Tenn. Ct. App. 2005) (citing *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn.1993)). Because the trial court observes the witnesses as they testify, it is in the best position to assess witness credibility. *Frazier v. Frazier*, No.W2007-00039-COA-R3-CV, 2007 WL 2416098, \*2 (Tenn. Ct. App. Aug. 27, 2007) (citing *Wells v. Tenn.*

*Bd. of Regents*, 9 S.W.3d 779, 783 (Tenn. 1999)). Therefore, we give great deference to the court’s determinations on matters of witness credibility. *Id.* “Accordingly, we will not reevaluate a trial judge’s credibility determinations unless they are contradicted by clear and convincing evidence.” *Id.* In this case, the court expressly stated that it “witnessed the demeanor of the witnesses” and found that Mr. Richmond was not credible and discounted his testimony; the court found Mr. Ochalek to be a credible witness and gave “great weight to his testimony.”

### Standing

We first address Mr. Richmond’s argument that Mr. Ochalek lacked standing to contest his marriage to Ms. Gills. Mr. Richmond claims that any right to challenge the validity of the marriage abated upon her death because Mr. Ochalek failed to prove the marriage was void. We find this argument to be without merit.<sup>2</sup>

Our Supreme Court has recognized standing as a judge-made doctrine “used to refuse to determine the merits of a legal controversy irrespective of its correctness where the party advancing it is not properly situated to prosecute the action.” *Knierim v. Leatherwood*, 542 S.W.2d 806, 808 (Tenn. 1976). This case was brought as a declaratory judgment action under Tenn. Code Ann. § 29-14-101, *et seq.* The Declaratory Judgment Act explicitly provides:

*Any person* interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent . . . may have a declaration of rights or legal relations in respect thereto to: (1) *ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others*[.]

Tenn. Code Ann. § 29-14-105(1) (emphasis added).

Mr. Ochalek is the son of Patricia Gills and a person entitled to inherit under the laws of intestacy. He testified that Ms. Gills wanted him to administer her estate and that she instructed Mr. Ochalek in the days before her death on how she wanted it divided. Ms. Gills’ marital status is a viable legal issue affecting the administration of her estate, the resolution of which is necessary in order to ascertain the individuals entitled to take from her estate.<sup>3</sup> We find that Mr. Ochalek is a proper person to challenge the marital status of Ms. Gills and affirm the trial court’s ruling that he had standing to prosecute the action.

### Validity of the Marriage

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<sup>2</sup>Mr. Richmond’s argument is based on Tenn. Code Ann. § 36-3-306 which forgives certain technical deficiencies to the extent that a “[f]ailure to comply with the requirements of §§ 36-3-104 – 36-3-111 shall not affect the validity of any marriage consummated by ceremony.” Tenn. Code Ann. § 36-3-306 does not apply to the issue of standing and is inapplicable in this case based on our determination that the marriage was void for failure to comply with Tenn. Code Ann. § 36-3-303(a) as discussed below.

<sup>3</sup>The estate of Patricia Gills is to be administered in Graves County, Kentucky, where she resided.

In Tennessee, the law of marriage is controlled by statute and is not governed by common law rules. *Coulter v. Hendricks*, 918 S.W.2d 424, 427 (Tenn. Ct. App. 1995). A marriage solemnized by ceremony is presumed valid; however, the presumption may be rebutted by cogent and convincing evidence. *Guzman v. Alvares*, 205 S.W.3d 375, 380 (Tenn. 2006) (citing *Aghili v. Saadatnejadi*, 958 S.W.2d 784, 789 (Tenn. Ct. App. 1997)); *see also Huey Bros. Lumber Co., Inc. v. Anderson*, 519 S.W.2d 588, 590 (Tenn. 1975) (citing *Gamble v. Rucker*, 137 S.W. 499 (Tenn. 1911)). Our courts have also recognized the mandatory nature of the marriage license requirement. *Harlow v. Reliance Nat'l*, 91 S.W.3d 243, 245 (Tenn. 2002); *Stovall v. City of Memphis*, No.W2003-02036-COA-R3-CV, 2004 WL 1872896, \*3 (Tenn. Ct. App. Aug. 20, 2004). “Before being joined in marriage, the parties shall present to the minister or officer a license under the hand of a county clerk in this state, directed to such minister or officer, authorizing the solemnization of a marriage between the parties.” Tenn. Code Ann. § 36-3-103(a). Thus, obtaining a marriage license is a condition precedent to the solemnization of a valid marriage under Tennessee Law. Op. Tenn. Atty. Gen. No. 06-110, 2006 WL 2104254 (July 12, 2006) (citing Tenn. Code Ann. § 36-3-103(a)). Additionally, the “[o]ne authorized by § 36-3-301 who solemnizes the rite of matrimony shall endorse on the license the fact and time of the marriage, and sign the license, and return it to the county clerk within three (3) days from the date of marriage. Every person who fails to make such return of the license commits a Class C misdemeanor.” Tenn. Code Ann. § 36-3-303(a) (emphasis added).

The trial court found that an application for a marriage license was made in Dickson County.<sup>4</sup> However, the court found that “[a] valid license to marry was never issued by the Dickson County court clerk.” The order does not clearly state what evidence the court based these findings on but does conclude that “[t]he marriage license was not properly signed by the officiant pursuant to Tenn. Code Ann. § 36-3-303” and further, that it “was fraudulently signed as prohibited by Tenn. Code Ann. § 36-3-112.”<sup>5</sup> As a result, the trial court declared the marriage between Ms. Gills and Mr. Richmond void. Because we find the evidence does not preponderate against the trial court’s finding that there was no marriage license validly signed by the officiant, we must affirm the judgment of the trial court.

Dickson County Clerk Phil Simons testified that when a couple applies for a marriage license, his office is to verify their identity, age, and social security numbers. A deputy clerk had apparently taken this information from Patricia Gills and Donnie Richmond. Mr. Simons’s signature appears on the Marriage Record. There is no explanation in the record of the timing or procedure used for issuing a marriage license to the parties, but once issued, a license is only valid for thirty days. Tenn. Code Ann. § 36-3-103(a). Mr. Simons provided the perforated tear-off portions of the Marriage Certificate and the vital statistics form that were filed with his office. Appearing on both

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<sup>4</sup>The court made no finding regarding the validity of the signature “Patricia D. Haley” on the application.

<sup>5</sup>“Fraudulently signing or knowingly using any false document purporting to be one provided for in § 36-3-104(a) [marriage license] or § 36-3-106 [signature of parents, guardian, next of kin, or custodian required when applicant is a minor] is a Class C misdemeanor.” Tenn. Code Ann. § 36-3-112.

sides of the tear-off portion to the Marriage Certificate is a disclaimer that reads: “This Marriage License is ‘VOID’ if not used within 30 days from date of issue.” Below this disclaimer is where the authorized officiant is supposed to sign and verify the solemnization of the marriage. Mr. Simons testified that if a party had returned these documents to the clerk’s office without the officiating minister’s signature, there would be no valid marriage.

Mr. Richmond admits to forging Mr. Ingram’s signature on both the marriage certificate and vital statistics form submitted to the county clerk’s office. He testified that “he did not initially have his brother sign the marriage license after the ceremony because he and Patricia were not sure if they wanted to finalize the marriage due to his bad credit.” Mr. Richmond claims that “a couple days later,” Ms. Gills said she wanted to be married, so he forged the minister’s name only in an effort to comply with the three-day filing requirement.

Mr. Richmond relies on *Aghili v. Saadatnejadi*, 958 S.W.2d 784 (Tenn. Ct. App. 1997), to support his argument that a marriage solemnized by ceremony should not be invalidated solely because the marriage license was improperly endorsed. In *Aghili*, the officiant signed the marriage license following the ceremony but failed to return it to the court clerk within three days as prescribed by Tenn. Code Ann. § 36-3-303(a). *Aghili*, 958 S.W.2d at 786. In upholding the validity of the marriage, the court noted “[t]he purpose of the filing requirement in Tenn. Code Ann. § 36-3-303 is to assure the preservation of a *reliable, accurate record of a marriage*.” *Id.* at 788 (emphasis added). Requiring the signature of the individual who personally officiated the ceremony is the best way to fulfill the purpose of the statute and ensure that the record made is reliable.

It has been suggested that the requirements of Tenn. Code Ann. § 36-3-303(a) are directory, rather than mandatory. *See* Richards on Tennessee Family Law § 3-1(a)(1) (2006). This argument rests on the fact that Tenn. Code Ann. § 36-3-303(a) provides for a criminal penalty to be assessed against the officiant, not the couple, for failure to comply with the filing requirement. *Id.* *Aghili* certainly stands for the proposition that the three-day filing requirement is directory as to the bride and groom. No penalty for failure to timely file the license is prescribed for them. Tenn. Code Ann. § 36-3-303(a) places the burden of returning the signed license to the county clerk within three days of the marriage on the one who solemnizes the marriage and the failure to do so is a misdemeanor. Tenn. Code Ann. § 36-3-303(a). So, as to the officiant, the filing requirement is mandatory.

We do not believe the legislature intended to invalidate a marriage solely because the person who solemnized the marriage failed to return the license within three-days. We cannot, however, conclude that the legislature merely suggested that the officiant sign the license or that forging the officiant’s name is permissible. Such a conclusion would contradict the plain, mandatory language used in the statute: the officiant “*shall*<sup>6</sup> endorse on the license the fact and time of the marriage, and sign the license. . . .” Tenn. Code Ann. § 36-3-303(a) (emphasis added). Only after the marriage license is returned and is properly signed by the officiant can the county clerk record the marriage

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<sup>6</sup>The word “shall” is ordinarily construed as being mandatory. *Stubbs v. State*, 393 S.W.2d 150, 154 (Tenn. 1965) (citing *Louisville & N.R. Co. v. Hammer*, 236 S.W.2d 971, 973 (Tenn. 1951)).

and certify the license. Tenn. Code Ann. § 36-3-103(c)(1).<sup>7</sup> Thus, the statutory scheme suggests the legislature intended the signature requirement to be mandatory because the marriage license cannot be recorded and certified without the signature of the officiant.

It is irrelevant whether or not Mr. Ingram would have signed the documents had he been asked. The fact is Mr. Ingram did not sign the marriage license or marriage records. Instead, Mr. Richmond knowingly signed Mr. Ingram's name and filed the forgeries with a county official of the State of Tennessee. "It is well settled in Tennessee that the courts of our State will not be utilized to enforce a contract which is the product of fraud; indeed, fraud vitiates all that it touches." *Shelby Elec. Co., Inc. v. Forbes*, 205 S.W.3d 448, 455 (Tenn. Ct. App. 2005). "Fraud vitiates and avoids all human transactions, from the solemn judgment of a court to a private contract. It is as odious and as fatal in a court of law as in a court of equity." *Id.* (quoting *New York Life Ins. Co. v. Nashville Trust Co.*, 292 S.W.2d 749, 754 (Tenn. 1956)). Mr. Richmond will not be entitled to benefit from his wrongdoing. As such, we will treat the marriage license as unsigned and therefore incomplete and invalid. *See* Tenn. Code Ann. § 36-3-103(c)(1). Because the proof in the record shows the requirements of Tenn. Code Ann. § 36-3-303 and for validly recording and certifying the marriage license were never met, we affirm the trial court's determination that the marriage is void.

We find *Harlow v. Reliance Nat'l*, 91 S.W.3d 243 (Tenn. 2002), instructive to our analysis of the other issues raised on appeal. In *Harlow*, the plaintiff and putative widow sought worker's compensation benefits as the surviving spouse of the deceased. *Harlow*, 91 S.W.3d at 245. The plaintiff and deceased were divorced in 1994 but reconciled the following year and participated in a "remarriage" ceremony in 1997. *Id.* at 244. The couple lived together as husband and wife, were known in the community to be husband and wife, and represented they were husband and wife on a loan application and other documents. *Id.* at 244-45. However, the couple never obtained a marriage license either before or after the ceremony. *Id.* at 244. The couple knew that no license existed and, accordingly, filed separate individual tax returns as "single" or as "head of household." *Id.* at 245. Despite their participation in a marriage ceremony and actions as spouses, the Special Workers' Compensation Appeals Panel of the Tennessee Supreme Court held that no legal marriage existed based upon the failure to comply with the licensing statute. *Id.* at 247.

Like the Harlows, Mr. Richmond and Ms. Gills participated in a marriage ceremony. Mr. Richmond, whose testimony the court discounted, claims the two cohabitated for eight years following the ceremony. However, Ms. Gills continued to file tax returns as a single individual and continued to go by the name of Patricia Gills in the community and on official documents.<sup>8</sup> The court found that Ms. Gills never held herself out in the community to be married and never considered herself to be married. The court based its conclusion on evidence presented by Mr.

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<sup>7</sup>Tenn. Code Ann. § 36-3-103(c)(1) provides in part that "[t]he county clerk issuing a marriage license is hereby authorized to record and certify any license used to solemnize a marriage that is properly signed by the officiant when such license is returned to the issuing county clerk."

<sup>8</sup>Of course, this fact alone is not controlling since a woman is not required to adopt the surname of her husband. *Dunn v. Palermo*, 522 S.W.2d 679, 688 (Tenn. 1975).

Ochalek which it found credible, but Mr. Richmond's own testimony casts doubt on whether either party intended to be married even after they participated in the ceremony.

Nonetheless, Mr. Richmond objected at trial and on appeal arguing the evidence of Ms. Gills' state of mind and reputation is irrelevant to whether or not a valid marriage contract existed. Although Mr. Richmond correctly states that Tennessee does not recognize common law marriage contracts which require an intent to be married,<sup>9</sup> we agree with the trial court that evidence of Ms. Gills' actions and belief as to her own marital status were important and relevant considerations for the court. And, because we give great deference to the trial court's determinations on credibility, we cannot adopt Mr. Richmond's explanation that Patricia Gills did not assume "Richmond" as her surname in order to shield herself from Mr. Richmond's creditors as the court did not find him to be a credible witness. In addition, the evidence does not preponderate against the court's finding that Mr. Richmond and Ms. Gills attempted to perpetrate a fraud upon creditors, the state, and the federal government.

### CONCLUSION

Tennessee presumes that regularly solemnized marriages are valid, but this presumption can be overcome. *Aghili*, 958 S.W.2d at 789. In this case, Mr. Ochalek has overcome the presumption with convincing evidence of the marriage's invalidity. The purported marriage between Mr. Richmond and Ms. Gills is void as a matter of law for failure to comply with Tenn. Code Ann. § 36-3-303(a). The judgment of the chancery court for Dickson County is affirmed in all respects. Costs of appeal are assessed against Appellant Donnie L. Richmond for which execution, if necessary, may issue.

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ANDY D. BENNETT, JUDGE

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<sup>9</sup>Common law marriages are based on the parties' conduct and will be recognized in Tennessee if they are valid under the laws of another state where such marriages are sanctioned. *Bowser v. Bowser*, No. M2001-01215-COA-R3-CV, 2003 WL 1542148, \*1 (Tenn. Ct. App. Mar. 26, 2003) (citing *Shelby County v. Williams*, 510 S.W.2d 73, 73-74 (Tenn. 1974)). Kentucky does not recognize common law marriage. *Murphy v. Bowen*, 756 S.W.2d 149, 150 (Ky. Ct. App. 1988) (citing Ky. Rev. Stat. Ann. § 402.020(3)).